

# Policy Brief



Authors: Andrija Mladenović, Project Manager

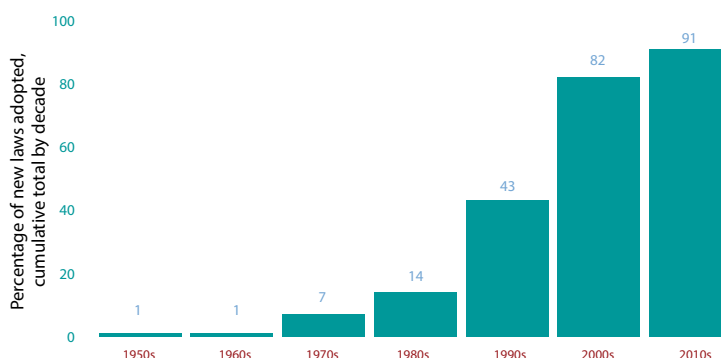
## A Game of Hide and Seek

### Asset Declarations for Public Officials

The asset and income declaration system is a powerful tool for rule of law and anti-corruption efforts. This mechanism works through imposing an obligation on Public Officials. In other words, according to the United Nations Convention against Corruption and the normative framework of the relevant country, public officials' material or financial benefits – such as properties and income – shall be made available to the competent state authority.<sup>1</sup> Today, according to the World Bank data, over 160 countries in the world implement assets declaration system (see Table 1 for more details). Within 30 days from the day of election, appointment or appellation, public officials in the Republic of Serbia are obliged to submit an asset declaration to the Anti-Corruption Agency, disclosing their assets and income, assets and income of their spouse or common-law partner, as well as minor children if they live in the same family household. The asset declaration is also submitted by officials whose term has ended, whereas urgent reporting is foreseen if the property or income of the public official has changed significantly in the previous year. However, due to the intensification of regional and cross-border offshore business, anti-corruption efforts in the area of asset declaration are becoming misplaced. This is because tools for tracking and detecting income and illegally acquired assets lag behind for innovative solutions aimed at hiding them from inquisitive citizens and institutions.

To better understand the issue, the analysis that follows reveals how much the dynamics of regional and offshore business has increased in the previous decade in Serbia. Moreover, it also shows how it affected the asset declaration system, and whether the arising problems can be solved without improved intersectoral and regional cooperation. This analysis aims to show that without a strengthened institutional cooperation between anti-corruption, tax, and judicial authorities, including cooperation with the civil sector and investigative media on the domestic and international level, there is a risk of normalising negative practices in the field of asset declaration.

Table 1 Number of adopted laws regarding asset declaration in the past three decades



Note: Approximate percentages based on the analysis of 158 disclosure jurists

### Intensifying cross-border, regional and offshore businesses

In the last decade, cross-border and regional business have significantly intensified in Serbia as numerous indicators demonstrate, such as foreign direct investments (FDI), commodity exchange, and direct investments of residents. According to the IBM Global Location Trends report, the Republic of Serbia is the world leader for the fourth year in a row in the number of jobs created through FDI projects in 2019 relative to the number of inhabitants.<sup>2</sup> In 2020, Serbia ranked first in Europe in terms of the number of FDI relative to the size of its economy.<sup>3</sup> Statistical data of international trade in commodities of the Republic of Serbia (see Illustration 1) also indicate that there has been an expansion of cross-border business in the last decade. For example, the data for the first quarter of 2022 indicate an increase of almost 40 percent compared to the period of 2021.<sup>4</sup> After the European Union member states, CEFTA countries are the second most important partner, with which the Republic of Serbia traditionally achieves a trade surplus that also grows from year to year. Therefore, the cross-border and regional business is evidently increasing.

2 IBM. *Global Location Trends: 2019 Annual Report*. 2020. page 5. Available at <https://www.ibm.com/downloads/cas/R9VW3VO5>.

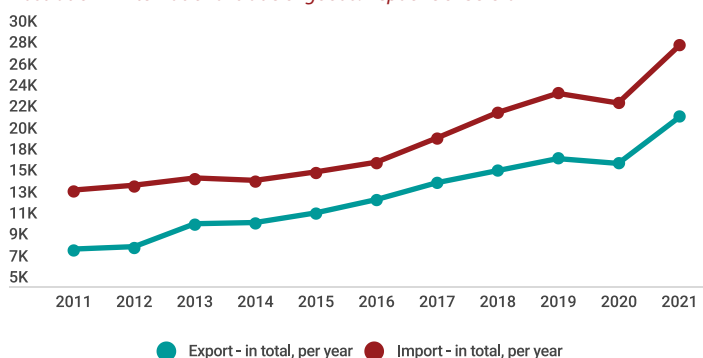
3 Glenn Barklie. *Greenfield FDI Performance Index 2019: Serbia storms to top*. fDi Intelligence. Available at <https://bit.ly/3CQnYpK> (15 August 2019).

4 Politika. *Spoljnotrgovinska razmena Srbije porasla 39,6 odsto. [Serbia's foreign trade increased by 39.6 percent.]* Available at <https://bit.ly/3z7SGtl> (29 April 2022)

1 In the case of the Republic of Serbia, these are the: Law on Prevention of Corruption ("Official Gazette of RS", no. 35/2019, 88/2019, 11/2021 - authentic interpretation, 94/2021 and 14/2022) and the Rulebook on the Register of Public Officials and Register of property and income of public officials ("Official Gazette of RS", no. 118/2020 and 96/2021)

However, does the cross-border and regional business intensification also lead to the offshore business expansion? Data indicate that the use of offshore destinations is not a foreign matter for business owners in Serbia, and tax havens are increasingly attractive destinations for conducting business. In the last decade, there is a trend of establishing an increasing number of legal entities, branches, or representative offices abroad by residents of the Republic of Serbia (see Illustration 2). Factors show that a better tax treatment and significant financial savings strongly affect this trend. For instance, Ireland is frequently a destination of choice considering its competitive tax policy. In the case of Slovenia, instead, it is due to the exceptional business environment, efficient administration, and geographical proximity. Moreover, in the case of the American federal state of Delaware, it is due to the tax exemption for individuals whose company is established but does not operate on the US market. In the West, for a decade or two, scandals related to offshore business regularly have been shaking the public. In Serbia, however, only recently, with the leakage of documents via the “Panama” and “Pandora Papers” investigations, has the public got acquainted with how familiar Serbian politicians and public officials have been with offshore business schemes, using them abundantly all these years.<sup>5</sup> In light of this, an intensification of offshore business has undoubtedly happened in the last decade in the context of a supporting phenomenon - a more dynamic cross-border and regional business.

Illustration 1 International trade of goods: Republic of Serbia



## Meaninglessness of the income and property reporting system

In the field of intensified cross-border, regional and offshore business, the Agency for Prevention of Corruption as well as other relevant institutions, are found to lack of capacity and tools to keep the asset declaration system credible and appropriate<sup>6</sup>. The case of the current Minister of Finance Sinisa Mali and the purchase of apartments at the Bulgarian seaside through an offshore company may be seen as the most prominent case in support of the abovementioned claim. At the time, the Agency for the Prevention of Corruption investigated and submitted a report to the High Prosecutor's Office in Belgrade<sup>7</sup>. However, the most intriguing aspect of this case refers to the surfaced copy of the report of the Directorate for the Prevention of Money Laundering. The latter clearly confirms that this institution had numerous incriminating information against Minister Mali at its disposal even before 2012. In other words, this happened before KRIK published the story, without ever sharing it with the Agency

5 For more details, see the list of persons associated with offshore companies at: <https://offshoreleaks.icij.org/investigations/pandora-papers?c=SRB&cat=0>.

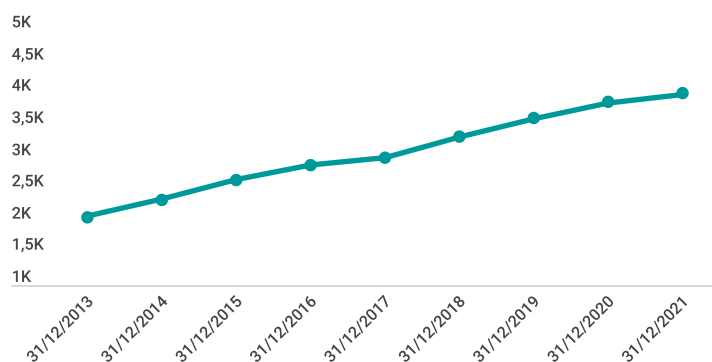
6 Stevan Dojčinović, Dragana Pečo i Atanas Tchobanov. *Siniša Mali tajno kupio 24 stana na bugarskom primorju*. KRIK. 2016. [Siniša Mali secretly bought 24 apartments on the Bulgarian coast] Available at: <https://bit.ly/3CY5Zl9>. (19 May 2022)

7 Anti-corruption agency report available at: <https://bit.ly/2Fzj6HN>

or the High prosecutor's office<sup>8</sup>. Complicated systems of offshore business, abundance of related persons from numerous foreign countries, dozens of bank accounts in just one individual case exceed the capacities of a single institution, in this case the Agency. This is why it is necessary for other institutions to get involved actively and start sharing information with each other, including the Directorate for the Prevention of Money Laundering and the Prosecutor's Office.

Regardless of the media uproar caused by the Mali case, the instances that point to the poor cooperation between the relevant institutions continued to pile up. Thus, in 2021, investigative journalists revealed that the company of public official Novica Tončev, “Tončev gradnja”, won the public procurement procedure in 2020 and carried out the work in health institutions. Eventually, this got recorded in the register of public procurements but not in the Novica Tončev's asset declaration. Moreover, discrepancies were found between the data available in registers of the Agency for the Prevention of Corruption and the Business Registers Agency.<sup>9</sup> Therefore, institutions such as the Agency for Business Registers or Real Estate Cadastre do not sufficiently cooperate with the Agency for the Prevention of Corruption, leading to wider negative implications. First, due to frequent alarming, citizens needlessly lose trust in institutions and become discouraged from exerting pressure to carry out a thorough and quick investigation when such is deemed necessary. Second, relevant state bodies repeatedly spend resources just to conclude that a suspected irregularity is yet another by-product of a dysfunctional cooperation among state authorities.

Illustration 2: The trend of direct investments made abroad by economic entities established in the Republic of Serbia (in millions of EUR)<sup>10</sup>



## The role of the civil sector and investigative journalism in the untangling of the spider web

In the previous decade or two, in Serbia, the civil sector and investigating media outlets were perhaps the only actors actively contributing to the search after hidden assets and money of politicians and public officials. As the documents of the Panamanian company Mossack Fonseca - one of the world's largest providers of shell companies - were disclosed, the “Paradise Papers” from 2016 revealed the offshore companies of over 140 high-ranking politicians and public officials around the world<sup>11</sup>. Similar to the efforts at the global level, investigative journalists conducted the investigation in Serbia. In the following year, the

8 The report reveals at least 45 accounts in different banks in Serbia to which money was coming from various offshore zones, and part of the money allegedly went to other companies in the region. More about it: Stevan Dojčinović, Dragana Pečo, Atanas Čobanov. *Detalji izveštaja Uprave za sprečavanje pranja novca o Malom* [Details of the report of the Administration for the Prevention of Money Laundering on Mali]. KRIK. 2018. Available at: <https://bit.ly/2Fzj6HN>. (19 May 2022)

9 Snežana Đurić. *Imovina funkcionera koji su na vlasti devet godina nije kontrolisana poslednjih sedam*. [The assets of officials who have been in power for nine years have not been controlled for the last seven] Pištaljka. 2021. Available at: <https://pistaljka.rs/home/read/962> (25 May 2022)

10 National Bank of Serbia. International investment position of the Republic of Serbia, 2013 – Q4 2021

11 See more at: <https://bit.ly/2rULIVh>

"Paradise Papers" stirred things up once again after providing a detailed insight into the business empire and wealth of the minister Nenad Popović, who owns an entire network of offshore companies.<sup>12</sup> KRIK journalists discovered that the Anti-Corruption Agency initiated three proceedings against Popović at the time. Moreover, the law office "Appleby", which was supposed to carry out Popović's plans to establish a network of offshore companies, was particularly interested in Popović's companies, which signed "19 contracts with the state in 2010 and 2011, for which he did not submit documentation [to the Agency]".<sup>13</sup> Without the civil sector and investigative journalists, these findings would remain hidden out from the public.

The case of Minister Popović is not the only one. In fact, investigative journalists disclosed several other cases when the institutions remained silent. This is why they are imposing themselves as an indispensable actor in the system of assets declarations. For instance, the "Pandora Papers" from 2021 revealed that, Nikola Petrović - the President of Serbia's godfather - and Minister Novica Tončev had offshore companies while serving as public officials, that they never reported to the Agency for the Prevention of Corruption. By the end of 2021, no prosecutor has initiated proceedings.<sup>14</sup> Even if the leaks from tax havens that were analysed by investigative journalists and civil sector analysts are excluded from the equation, it is still obvious that a huge part of other irregularities in the assets declarations system got discovered and presented to the wider audience by these actors. Serbia is not alone in this, and a similar pattern is present even in countries with a more efficient authorities responsible for preventing corruption. Therefore, the relationship between the civil sector and the media, on the one hand, and the anti-corruption bodies, on the other hand, is not at the level of systematic cooperation that would require mutual trust operationalised in regular communication and information exchange and sharing. Instead, the current model of communication is based on the principle of "tip-off".

### Regional information exchange

Regional business cooperation and direct investments of residents of the Republic of Serbia in surrounding countries, including those of public officials, are on the rise. Milutin Mrkonjić, a high-ranking official of the Socialist Party of Serbia, a minister in several Governments of the Republic of Serbia, and the former President of the National Assembly, provides an example of moving business to the countries of the region. He was the owner of the Podgorica company Habit Invest d.o.o Podgorica since 2002. Despite the requirements set in the Law on Prevention of Conflicts of Interest in Public Office and the Law on the Anti-Corruption Agency from 2008, Milutin Mrkonjić never reported ownership stake in any legal entity.<sup>15</sup> Another similar example is again that of Siniša Mali. The abovementioned report of the Directorate for the Prevention of Money Laundering also revealed details of the business partnership between Mali and a Bulgarian lawyer who is considered a person of risk by the Bulgarian Financial Intelligence Service due to previous participation in suspicious financial transactions. Several cases with substantial media coverage show that public officials do not avoid regional business cooperation and relocation of businesses to hide their assets. This is worrying considering the limited regional exchange of information between competent institutions.

<sup>12</sup> See more at: <https://bit.ly/3z2hW4A>

<sup>13</sup> Dragana Pečo, Stevan Dojčinović. Popović „visokorizičan“ za ošor agenciju [Popović "high risk" for an offshore agency]. KRIK. 2017. Available at: <https://bit.ly/3SGjubv>. (24. Maja 2022.)

<sup>14</sup> Jelena Radivojević. Tužilaštva slepa za ošor firme Petrovića i Tončeva [The prosecutor's office is blind to the offshore companies of Petrović and Tončev]. KRIK. 2021. Available at: <https://bit.ly/3SqkqQU> (25 May 2022)

<sup>15</sup> Stefan Marković. Milutin Mrkonjić dobio na poklon firmu u Crnoj Gori koju nije prijavio Agenciji. [Milutin Mrkonjić received a company in Montenegro as a gift that he did not report to the Agency] CINS. 2020. Available at: <https://bit.ly/3VQxwdd>. (19. maj 2022.)

If ad-hoc cases about business cooperation are not sufficiently convincing, there are strong indirect indicators about the assets that public officials in the region own. This stresses the necessity of sharing information and cooperation of various regional state institutions. Although there are no direct statistical data available for Serbia, for example, in 2014, in Republika Srpska, around one thousand public officials declared property in the region.<sup>16</sup> There are some factors that need to be taken into account. First, the Republic of Serbia has a significantly larger number of public officials than Republika Srpska. Second, the financial power of Serbian public officials is certainly greater than the one of the officials from Republika Srpska. Third, the economic ties between the two countries in the region have been more significant in the past few years than in 2014. Hence, it can be argued that the number of public officials with assets in the region would be much higher in Serbia. Thus, the case of Republika Srpska can serve as kind of a substitute to statistical evidence and proof that, concerning their property and business relations, public officials know no borders.

### System of asset and income declaration in step with the times

All indicators show that cross-border and regional business has multiplied in Serbia in the last decade. The rise of economic activity together with better tax treatments in various destinations consequently led to the intensification of offshore business. In such a context, the result of the analysis is two-fold. First, it indicates the lack of capacity of the Agency for the Prevention of Corruption and other individual institutions. Second, the dysfunctionality in their cooperation, jeopardises the system of reporting income and assets. In the previous period, the civil sector and investigative journalists significantly contributed to exposing hidden assets and income of public officials, in a way, taking over the role of these institutions. However, the state institutions perceive them as rivals rather than partners. This is why not only cooperation is absent, but the institutions' reaction is almost exclusively on an ad-hoc basis as a consequence of public pressure for their efforts to be recognised. Finally, intense regional economic cooperation and the consequent relocation of business and concealment of assets abroad have become another piece of the puzzle that renders institutional efforts to maintain the income and asset reporting system ineffective. The prerequisites for an efficient institutional apparatus that manages the system of income and property declarations are as follows:

- Increased cooperation, regular communication, and sharing of information between the Agency for the Prevention of Corruption, the Directorate for the Prevention of Money Laundering, tax authorities, the police, and the prosecutor's office.
- Strengthening the internal capacities of relevant institutions, and first of all the Agency for the Prevention of Corruption, in order to identify the risks of hiding wealth and illegally acquired assets in the context of enhanced regional economic cooperation and intensified offshore operations.
- Alignment of registers and databases at the state level – with, in the first place, the register of property and income reports with the real estate cadastre, the public procurement portal, and the register of economic entities.
- Introduction of an automation system for cross-checking information from available registers and databases in order to detect inconsistencies.<sup>17</sup>
- Gradual introduction of the automation system of risk analysis and verification of property and income declarations of public officials.<sup>18</sup>

<sup>16</sup> Oko 1.000 funkcionera u RS prijavilo imovinu u regionu. [About 1,000 officials in the RS have declared property in the region]. Gyka. 2014. Available at: <https://bit.ly/3VP8YkN> (25 May 2022)

<sup>17</sup> See more at: Dmytro Kotlyar, Laura Pop. Automated Risk Analysis of Asset and Interest Declarations of Public Officials. International Bank for Reconstruction and Development / The World Bank. 2021. Available at <https://bit.ly/3z91PIB>. (26 May, 2022)

<sup>18</sup> Ibid.

- Establishing cooperation between the civil sector and investigative media outlets, on the one hand, and the Agency for Prevention of Corruption, on the other hand, which would include regular communication and sharing of information and resources.
- Establishing a sustainable model of cooperation with anti-corruption bodies and other important institutions of the countries in the region, which would include access to relevant databases to prevent the concealment of income and illegally acquired assets in the countries in the region.<sup>19</sup>

The implementation of these recommendations would greatly change the entire structure of the property and income declaration system in the Republic of Serbia. Preventive capacities and the ability of the Agency for the Prevention of Corruption to react *ad hoc* upon receiving information or identifying risks would be significantly increased. In addition, the adoption of the recommendations would significantly demotivate actors who are required to declare their assets and income to engage in the risk of hiding wealth, and in the long term, to engage in illegal enrichment activities as the options for hiding it would be reduced to a minimum. Finally, in the future, higher attention should be paid to the innovative mechanisms for automating cross-checking of information and risk analysis and verification of asset and income declarations, as they would allow anti-corruption bodies to increase the efficacy of using already limited resources. At the very end, the social implications of adopting the recommendations would be significant, primarily as regards to reducing citizens' mistrust in state institutions and their anti-corruption efforts, which in the long run can lead to deeper consequences - reduction of political apathy among citizens and preventing democratic backsliding. The list of systemic problems of property and income declarations in the Republic of Serbia does not end here, and inevitably because of this, the potential for improvement is not exhausted by the recommendations of this paper. Therefore, future advocacy efforts should consider several additional topics in more detail, including:

- Exclusion from the definition of a public official, directors, and members of the executive boards of educational and health institutions and all companies in which the Republic of Serbia, autonomous provinces or local governments have a stake in.<sup>20</sup>

19 In accordance with the International Treaty on Exchange of Data for the Verification of Asset Declarations. Available at: <https://bit.ly/3DzwoU7>.

20 European Commission, "Serbia 2021 Report", SWD (2021), p. 30

- Too frequent application of the principle of opportunity<sup>21</sup> and sloppy investigations<sup>22</sup> by which prosecutors' offices enable public officials to avoid prison sentences provided for by law.
- Irregular checks of individual declarations of assets and income.<sup>23</sup>

Progress in this area can be expected only with a comprehensive approach to the problem and by looking at every single controversial aspect of the existing assets declaration system, aside from limiting the freedom of manoeuvre of those looking to exploit legal loopholes.



*The R2G4P project, coordinated by the Center for the Study of Democracy, Bulgaria, benefits from a € 1.5 million grant from Iceland, Liechtenstein and Norway through the EEA and Norway Grants Fund for Regional Cooperation.*

21 Snežana Đurić, „Oportunitet iskoristilo 137 funkcionera samo u jednoj godini“, Portal Pištaljka, [Snežana Đurić, “The opportunity was used by 137 officials in just one year“, Portal Pištaljka] available at: <https://bit.ly/3VRd63O>

22 Anđela Milivojević, Bojana Bosanac, „Vaspitne kazne za neodgovorne funkcionere“, [Anđela Milivojević, Bojana Bosanac, “Edifying punishments for irresponsible officials“] CINS, 2017, available at: <https://bit.ly/3VPDhaZ>

23 Snežana Đurić, „Imovina funkcionera koji su na vlasti devet godina nije kontrolisana poslednjih sedam“, Pištaljka.rs, [Snežana Đurić, “The assets of officials who have been in power for nine years have not been controlled for the last seven“] available at: <https://pistaljka.rs/home/read/962>

## About European Policy Centre - CEP

European Policy Centre - CEP - is a nongovernmental, non-profit, independent think-tank, based in Belgrade. It was founded by a group of professionals in the areas of EU law, EU affairs, economics and public administration reform, with a shared vision of changing the policy making environment in Serbia for the better – by rendering it more evidence based, more open and inclusive and more substantially EU accession driven. Profound understanding of EU policies and the accession process, the workings of the Serbian administration, as well as strong social capital combine to create a think-tank capable of not only producing high quality research products but also penetrating the decision making arena to create tangible impact. Today, CEP organises its work into four programme areas:

- 1) Good Governance;
- 2) Internal Market and Competitiveness;
- 3) Regional Policy, Networks and Energy;
- 4) Our Europe.